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Attorneys for Defendants Green United, LLC, and Wright W. Thurston and Relief Defendants

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

GREEN UNITED, LLC, et al.,

Defendants.

**RESPONSE OF DEFENDANT GREEN
UNITED, LLC TO SEC'S OBJECTION
TO PROPOSED INTERIM ORDER
ON DEFENDANTS' MOTION TO
DISMISS**

Case No. 2:23-cv-00159-BSJ

Judge Bruce S. Jenkins

Defendants Green United, LLC ("Green United") and Wright W. Thurston ("Thurston"),
through counsel of record, hereby respond to the Objection of Plaintiff Securities and Exchange

Commission (“SEC”) to the Defendants’ Proposed Interim Order on Defendants’ Motion to Dismiss.

At the conclusion of oral argument on Defendants’ Motions to Dismiss held on September 8, 2023, the Court instructed Defendants to file a proposed Order. Defendants filed their proposed Order on September 18, 2023. [Dkt. 54]. The SEC objected to Defendants’ proposed Order on September 20, 2023. [Dkt. 55]. The SEC objected to paragraphs 3 and 5 of Defendants’ proposed Order – addressed below.

Paragraph 3

During oral argument on Defendants’ motions to dismiss, the Court stated as follows:

As to the remaining motions, I'm going to reserve on those. It's an interesting case, but I'm going to place a burden on counsel. I want both the moving parties, in a couple of weeks, to file with the court their explanation of what a Green Box is, and their explanation of what's being sold including not just the machinery, but if something else is being sold, I want you to tell me what it is. And if there are separate -- is there are separate software, explain to me what software that you're talking about and give me an example. And I'll place that burden initially on the defendants. If you can get that done in a couple of weeks and then I'm interested in the United States telling me what was sold. Tr., [Dkt. 52], at p. 78, lines 3-16.

Consistent with the Court’s instruction, Paragraph 3 of the proposed order states: “By September 25, 2023, Defendants shall file a supplemental memorandum with their explanation of (a) what a Green Box is, (b) what any accompanying software is, and (c) what Green United sold to people.”

In its opposition, the SEC does not claim that this language fails to accurately reflect the order issued by the Court from the bench. Instead, the SEC asserts that the order should reflect that the supplemental briefing not contain facts from outside the Complaint. The SEC’s position is counter to what the Court instructed the parties to do and what the Court wants to review. The

Court said, “I’m eager to be educated in the – in the esoteric area that people are talking about.” Tr. 79:2-4. The Court already possesses the SEC’s complaint. Supplemental briefing that is not permitted to contain any information not already in the Complaint would do nothing to further educate the Court, and thus, would not serve any purpose.

Paragraph 3 in the proposed Order is in harmony with the direction from the Court. The Court instructed Defendants to answer the above-quoted questions and Defendants intend to file their response to those questions on Monday, September 25, 2023.

Paragraph 5

Paragraph 5 of the proposed order states: “Because Defendants’ Motion are still pending, Plaintiff shall file an amended Complaint against Wright Thurston, if any, only after the Court has ruled on the pending Motions to Dismiss, and only if the Court does not grant those Motions with prejudice.” Green United acknowledges that the Court did not include this language in its order from the bench. The Court granted Mr. Thurston’s motion to dismiss the fraud claims asserted against him with leave to amend, but did not provide guidance regarding the timing of such an amendment. Green United respectfully suggests that such guidance would be beneficial.

The parties did meet and confer regarding paragraph 5. The SEC did not state if or when it intends to file an amended complaint against Mr. Thurston regarding its fraud claims, and has not stated such in its objection. Defendants’ motion to dismiss, premised on the SEC’s failure to plead the common enterprise element of an investment contract, is pending before the Court and the Court has asked for further briefing on that issue. Procedural confusion will arise if the SEC files an amended complaint while Defendants’ motions to dismiss the original complaint remain pending; for example, (a) are the pending motions then moot; (b) does motion to dismiss briefing need to start over; and (c) should motions to dismiss both versions of the complaint proceed in

parallel. Defendants do not believe that the Court intended its order to result in procedural confusion. Accordingly, Green United respectfully suggests including paragraph 5 in the order.

DATED this 20th day of September, 2023.

PARSONS BEHLE AND LATIMER

/s/ Jonathan D. Bletzacker

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CERTIFICATE OF SERVICE

On this 20th day of September 2023, I hereby certify that I electronically filed a true and correct copy of the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification and service to all counsel of record.

/s/ Jonathan D. Bletzacker